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CONFIDENTIAL ATTORNEY-CLIENT PRIVILEGED COMMUNICATION

Date:	MARCH 29, 2004
To:	EXAMINER JEFFREY A. BRIER U.S. PATENT AND TRADEMARK OFFICE
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Client/Matter No.:	PHN 14,491A (7790/163)
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TRANSMITTAL FORM

(to be used for all correspondence after initial filing)

Attorney Docket No.	PHN 14,491A (7790/163)
Application Number	08/704,400
Filing Date	AUGUST 27, 1996
First Named Inventor	RENATE M. SOMBROEK
Group Art Unit	2672
Examiner	BRIER, JEFFREY A.

ENCLOSURES *(check all that apply)*

- ☐ Amendment
  - ☐ After Final
  - ☐ Affidavits/declaration(s)
- ☐ Status Letter
- ☐ Petition for Extension of Time Request (duplic)
- ☐ Express Abandonment Request
- ☐ Information Disclosure Statement, PTO-1449, art
- ☐ Certified Copy of Priority Document(s)
- ☐ Response to Missing Parts/ Incomplete Application
- ☐ Assignment Papers *(for an Application)*
- ☐ Drawings:
- ☐ After Allowance Communication to Group
- ☐ Petition Routing Slip (PTO/SB/69) and Accompanying Petition
- ☐ To Convert a Provisional Application
- ☐ Power of Attorney, Revocation Change of Correspondence Address
- ☐ Terminal Disclaimer
- ☐ Small Entity Statement
- ☐ Request of Refund
- ☐ Appeal Brief
- ☐ Appeal Communication to Group *(Appeal Notice, Brief, Reply Brief)*
- ☐ Proprietary Information
- ☐ Post Card Receipt
- ☐ Additional Enclosure(s) *(please identify below):*
- ☒ **Reply Brief in reply to Examiner's Answer filed January 28, 2004**
- ☐
- ☐

☒ The Commissioner is hereby authorized to charge any fees which may be required, or credit any overpayment, to Deposit Account No. 50-1713. A duplicate copy of this sheet is enclosed.

☒ I hereby petition under 37 CFR § 1.136(a) for any extension of time required to ensure that this paper is timely filed. Please charge any associated fees which have not otherwise been paid to Deposit Account No. 50-1713. A duplicate copy of this sheet is enclosed.

CALCULATION OF FEE

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First Presentation of Multiple Dep. Claim				

Small Entity		or	Large Entity	
Rate	Add'l Fee		Rate	Add'l Fee
x $9=	0		x $18=	
x $43	0		x $86	
+$145	—		+ $290=	
total add'l fee	$ 0		total add'l fee	$

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

Firm or Individual name	DARRIN WESLEY HARRIS Registration No. 40,636 CARDINAL LAW GROUP 1603 Orrington Avenue, Suite 2000 Evanston, IL 60201
Signature	D Wh
Date	March 29, 2004

CERTIFICATE OF FACSIMILE

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#49 Reply Brief 3/31/04 K.Pannell

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DARRIN WESLEY HARRIS (40,636)
Name of Appellant, assignee or registered representative

Signature

March 29, 2004
Date of Signature

PATENT
Case No. PHN 14,491
(7790/163)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re patent application of:

RENATE M. SOMBROEK

Serial No.: 08/704,400

Filed: AUGUST 27, 1996

Title: A SYSTEM FOR SPEED ADAPATIVE POSITIONING ON A CURSOR

Examiner: BRIER, JEFFREY

Group Art Unit: 2672

REPLY BRIEF

Mail Stop **Appeal Brief - Patents**
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

Appellant herewith respectfully presents a Reply Brief on Appeal as follows:

1. REAL PARTY IN INTEREST

Appellant's statement identifying the real party in interest is contained in the Appeal Brief filed by the Appellant on 11/28/2003.

2. RELATED APPEALS AND INTERFERENCES

As of the filing date of this Reply Brief, the Appellant and the undersigned attorney are not aware of any other appeals or interferences which will directly affect or be directly affected by or having a bearing on the Board's decision in the pending appeal.

3. STATUS OF CLAIMS

Appellant's statement regarding the status of the claims 34-43 and an appendix of claims 34-43 are contained in the Appeal Brief filed by the Appellant on 11/28/2003.

4. STATUS OF AMENDMENTS

A status of the amendments is contained in the Examiner's Answer issued by Examiner Brier on 01/28/2004.

5. SUMMARY OF THE INVENTION

An accurate and concise summary of the invention described and claimed in *U.S. Patent Application Serial No. 08/704,400* is contained in the Appeal Brief filed by the Appellant on 11/28/2003.

6. ISSUE

Appellant's statement regarding the issue for appeal is contained in the Appeal Brief filed by the Appellant on 11/28/2003.

7. GROUPING OF CLAIMS

Appellant's statement regarding the grouping of claims 34-43 is contained in the Appeal Brief filed by the Appellant on 11/28/2003.

8. ARGUMENTS

Appellant's arguments for overcoming the rejection of claims 34-43 as being anticipated by *Levine* are contained in the Appeal Brief filed by the Appellant on 11/28/2003.

The Appellant herein replies to the failure by Examiner Brier to understand a difference between the term "pre-determined" as recited in claims 34-43 and the term "arbitrary" as erroneously used by Examiner Brier to support his rejection of claims 34-43 in view of *Levine*. The Appellant therefore provides the following TABLE 2 to assist Examiner Brier in understanding the difference between the term "pre-determined" as recited in claims 34-43 and the term "arbitrary" as erroneously used by Examiner Brier to support his rejection of claims 34-43 in view of *Levine*. In TABLE 2, the predetermined time interval t_1 as illustrated in FIG. 2 of *U.S. Patent Application Serial No. 08/704,400* is six (6) seconds; Va = 0 for *Levine*; and Vc = 0.1t from equation [1] of *Levine*.

TABLE 2

Depression Time t (seconds)	*U.S. Patent Application Serial No. 08/704,400*		*Levine*		
	1st Speed Range 0 to V_1	2nd Speed Range* 0 to V_2	V_A (volts)	V_B (volts)	V_C (volts)
t1	$0 < V_{t1} < V_1$	N/A	0.00	0.05	$V_{t1} = 0.10$
t2	$V_{t1} < V_{t2} < V_1$	N/A	0.00	0.10	$V_{t2} = 0.20$
t3	$V_{t2} < V_{t3} < V_1$	N/A	0.00	0.15	$V_{t3} = 0.30$
t4	$V_{t3} < V_{t4} < V_1$	N/A	0.00	0.20	$V_{t4} = 0.40$
t5	$V_{t4} < V_{t5} \leq V_1$	N/A	0.00	0.25	$V_{t5} = 0.50$
t6 (t_1)	N/A	$V_{t5} \leq V_{t6} < V_2$	0.00	0.30	$V_{t6} = 0.60$
t7	N/A	$V_{t6} < V_{t7} < V_2$	0.00	0.35	$V_{t7} = 0.70$
t8	N/A	$V_{t7} < V_{t8} < V_2$	0.00	0.40	$V_{t8} = 0.80$
t9	N/A	$V_{t8} < V_{t9} < V_2$	0.00	0.45	$V_{t9} = 0.90$
t10	N/A	$V_{t9} < V_{t10} < V_2$	0.00	0.50	$V_{t10} = 1.00$

*Please note that the lower boundary of the 2nd speed range can be any value between 0 and V_1.

Present Application. The column for *U.S. Patent Application Serial No. 08/704,400* in TABLE 2 clearly demonstrates that, with a predetermined time interval of Δ6 seconds after the initial application of force on the user-interface, all depression times t1-t5 prior to six (6) seconds are encompassed by "wherein, upon an initial application of force on said user-interface by the user, the actual displacement speed of the cursor is variable within a first speed range" as recited in independent claim 34, and that all depression times t6-t10 upon and after six (6) seconds are encompassed by "wherein, upon a predetermined time interval after the initial application of force on said user-interface by the user, the actual displacement speed of the cursor is variable within a second speed range" as recited in independent claim 34.

Specifically, for a depression lasting less than six (6) seconds, the actual displacement speed of the cursor is variable within the 1st speed range 0 to V_1 as illustrated in FIG. 2 of *U.S. Patent Application Serial No. 08/704,400* whereby the 2nd speed range V_1 to V_2 is inapplicable. Thus, if the application of force on the user-interface is released prior to six (6) seconds, then the actual displacement speed of the cursor was variable exclusively within the 1st speed range 0 to V_1.

Conversely, for a depression lasting six (6) seconds or more, the actual displacement speed of the cursor is variable within the 2nd speed range V_1 to V_2 as illustrated in FIG. 2 of *U.S. Patent Application Serial No. 08/704,400* whereby the 1st speed range 0 to V_1 is inapplicable. Thus, if the application of force on the user-interface is released upon or after six (6) seconds, then the actual displacement speed of the cursor was variable within the 1st speed range 0 to V_1 for a time period prior to six (6) seconds and thereafter variable within the 2nd speed range V_1 to V_2.

Clearly, the inventive concept of a predetermined time interval by *U.S. Patent Application Serial No. 08/704,400* is the basis for displacing the cursor within the 1st speed range 0 to V_1 prior to a depression time of six (6) seconds and for switching from the 1st speed range 0 to V_1 to the 2nd speed range V_1 to V_2 only upon reaching a depression time of six (6) seconds.

Levine. The column for *Levine* in TABLE 2 clearly demonstrates that *Levine* clearly teaches away from a predetermined time interval "wherein, upon an initial application of force on said user-interface by the user, the actual displacement speed of

the cursor is variable within a first speed range" as recited in independent claim 34, and "wherein, upon a predetermined time interval after the initial application of force on said user-interface by the user, the actual displacement speed of the cursor is variable within a second speed range" as recited in independent claim 34.

Specifically, the arbitrary designation of midpoint B as the boundary between the 1st speed range and the 2nd speed range for *Levine* as asserted by Examiner Brier is determined **after a release of a cursor button 1** illustrated in FIG. 1 of *Levine* (i.e., a post-determination, not a pre-determination). Thus, the 1st speed range and the 2nd speed range of *Levine* are not defined until after the release of cursor button 1 as demonstrated in the following TABLE 3, which is derived from TABLE 2 herein:

TABLE 3

Depression Time t (seconds)	*LEVINE*				
	V_A (volts)	V_B (volts)	1st Speed Range V_A to V_B	V_C (volts)	2nd Speed Range V_B to V_C
t1	0.00	0.05	0.00 to 0.05	$V_{t1} = 0.10$	0.05 to 0.10
t2	0.00	0.10	0.00 to 0.10	$V_{t2} = 0.20$	0.10 to 0.20
t3	0.00	0.15	0.00 to 0.15	$V_{t3} = 0.30$	0.15 to 0.30
t4	0.00	0.20	0.00 to 0.20	$V_{t4} = 0.40$	0.20 to 0.40
t5	0.00	0.25	0.00 to 0.25	$V_{t5} = 0.50$	0.25 to 0.50
t6	0.00	0.30	0.00 to 0.30	$V_{t6} = 0.60$	0.30 to 0.60
t7	0.00	0.35	0.00 to 0.35	$V_{t7} = 0.70$	0.35 to 0.70
t8	0.00	0.40	0.00 to 0.40	$V_{t8} = 0.80$	0.40 to 0.80
t9	0.00	0.45	0.00 to 0.45	$V_{t9} = 0.90$	0.45 to 0.90
t10	0.00	0.50	0.00 to 0.50	$V_{t10} = 1.00$	0.50 to 0.10

A proper understanding of *Levine* reveals that V_A is known prior to a depression of cursor button 1 and that V_C is not determined until after a release of the depression of the cursor button 1. Consequently, midpoint voltage V_B is not determined until after the release of the depression of the cursor button 1, which means the two speed ranges of *Levine* are not determined until after the depression of the cursor button 1. As such, *Levine* can not be interpreted by Examiner Brier to teach a predetermined time interval (e.g., Δ6 seconds as shown with TABLE 2 herein) for the displacing the cursor within the 1st speed range V_A to V_B prior to the predetermined time interval (e.g., depression time less than six (6) seconds) and for switching from the 1st speed range V_A to V_B to the 2nd speed range V_B to V_C only upon reaching the predetermined time interval (e.g., depression time equal to or greater than six (6) seconds or more).

For example, after depression of a cursor button for no more than six (6) seconds yet prior to a release of cursor button 1, the displacement speed of the cursor is in the 1st speed range 0 to V_1 in accordance with *U.S. Patent Application Serial No. 08/704,400* as demonstrated in TABLE 2 herein due to the predetermined time interval being six (6) seconds. By comparison, the displacement speed of the cursor can not be identified as being in the 1st speed range V_A to V_B or in the 2nd speed range V_B to V_C in accordance with *Levine* because cursor button 1 has not been released to obtain a final value of V_C whereby a post-determination of both speed ranges can be accomplished as demonstrated by TABLE 3 herein.

Further, after a depression of a cursor button for six (6) seconds or more yet prior to a release of the cursor button, the displacement speed of the cursor is in the 2nd speed range V_1 to V_2 in accordance with *U.S. Patent Application Serial No. 08/704,400* as demonstrated in TABLE 2 herein. Again, by comparison, the displacement speed of the cursor can not be identified as being in the 1st speed range V_A to V_B or in the 2nd speed range V_B to V_C in accordance with *Levine* because cursor button 1 has not been released to obtain a final value of V_C whereby a post-determination of both speed ranges can be accomplished as demonstrated by TABLE 3 herein.

Clearly, a post-determination of the 1st and 2nd speed ranges only after a release of cursor button 1 as taught by *Levine* negates a predetermined time interval as taught and claimed by *U.S. Patent Application Serial No. 08/704,400* that defines both speed ranges prior to an application of force on the user-interface whereby the displacement speed of the cursor is in the 1st speed range V_A to V_B for all depression times up to the predetermined time interval and the displacement speed of the cursor is in the 2nd speed range V_B to V_C for all depression times equaling or exceeding the predetermined time interval. Furthermore, by negating a predetermined time interval, *Levine* clearly teaches away from counting timing signals as taught by *U.S. Patent Application Serial No. 08/704,400* and as recited as "wherein, during the time period of the application of force on said user-interface by the user, at least one timing signal indicative of the user-desired manipulation of the cursor as sensed by said user-interface is generated, an actual displacement speed of the cursor as represented by said display is variable within a first

speed range when a total generation of timing signals is less than a pre-specified number, and the actual displacement speed of the cursor is variable within a second speed range when the total generation of timing signals is equal to or greater than the pre-specified number" within independent claim 40.

Specifically, to implement the equation $V_C = \left(\frac{V_1}{(R_1)(C)}\right)t$ for calculating voltage V_C, *Levine* teaches an analog embodiment of a circuit as illustrated in FIG. 1 of *Levine* for continually executing $V_C = \left(\frac{V_1}{(R_1)(C)}\right)t$ during a depression of cursor button 1 and for executing equations $\Delta V_C = -\left(\frac{(V_4)(t_1)}{(R_2)(C)}\right)$ and $\Delta V_e = \left(\frac{(V_1)(t_r)}{(R_1)(C)}\right)$ after a release of cursor button 1. This analog embodiment clearly does not function based on a generation and counting of timing signals.

Levine further teaches a digital embodiment of the circuit as illustrated in FIG. 1 of *Levine* for discretely executing $V_C = \left(\frac{V_1}{(R_1)(C)}\right)t$ by displacing the cursor based on a sequential execution of distinct cursor speeds represented by a sequential decrementing of stored time-delay values during the depression of the cursor button 1 wherein each time-delay value has a fixed cursor speed associated therewith that is defined by one (1) unit movement/time delay. See, *Levine* at page 7, line 12 to page 8, line 16. This digital embodiment clearly does not function based on a generation and counting of timing signals.

By comparison, to implement the predetermined time interval, *U.S. Patent Application Serial No. 08/704,400* teaches a circuit as illustrated in FIG. 4 of *U.S. Patent Application Serial No. 08/704,400* for discretely generating and counting timing signals to thereby switch from the 1st speed range 0 to V_1 to a 2nd speed range V_1 to V_2 only upon counting a prescribed number of generated timing signals that correspond to the predetermined time interval.

In summary, *Levine* is best characterized as generally teaching "wherein, upon a release of an application of force on said user-interface by the user, the actual displacement speed of the cursor was variable within a first speed range during a first time interval and a second speed range during a second time interval" and "wherein the first time interval and the second time interval are post-determined as a function of the total time period of the application of force on said user-interface by the user". And, more specific to the digital embodiment, *Levine* specifically teaches "wherein the first time interval and the second time interval are post-determined as a function of each time delay-value decremented, in whole or in part, during the application of force on said user-interface by the user". Withdrawal of the rejection of claims 34-43 under 35 U.S.C. §102(b) as being anticipated by *Levine* is again respectfully requested.

Dated: **March 29, 2004**

Respectfully submitted,
Renate M. Sombroek et al.

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